405

Distr.
GENERAL

UNCTAD/SDD/SER/3
4 October 1993

Original: ENGLISH

United Nations Conference on Trade and Development

THE IMPACT OF SUBSIDIES ON TRADE IN SERVICES

Background Note by the UNCTAD Secretariat

GE.93-53801

CONTENTS

Chapter		*Paragraphs*
Introduction		1-4
I.	SUBSIDIES FOR THE SERVICES SECTOR	5-9
II.	SUBSIDIES TO SERVICES: SOME EXAMPLES	10-23
	A. Subsidies to Infrastructural Services	10-12
	B. Export Market Development	13-15
	C. Media Services	16
	D. Financial Services	17
	E. Subsidies to Goods	18-19
	F. Government Purchases	20-21
	G. Border Tax Adjustments	22
	H. Monopolies	23
III.	THE IMPACT OF SUBSIDIES ON SERVICE TRADE AND PRODUCTION	24-31
IV.	PRIORITIES FOR FURTHER WORK	32-35

INTRODUCTION

1. Under item 3(d) of its Work Programme, the Standing Committee on Developing Services Sectors will study the impact of subsidies on trade in services, especially on the exports of developing countries. The secretariat has prepared this note with the objective of providing elements which could assist the Standing Committee in its further consideration of this issue.

2. The multilateral trading system has traditionally had difficulty in coming to grips with the issue of subsidies, reflecting to a large extent differing perceptions among countries as to the appropriate role of governments in the support of economic, social and development objectives, and the acceptability of the trade effects of the pursuit of these objectives. The original text of GATT contained few disciplines on subsidies (although the industrialized countries soon recognized the need for special disciplines on export subsidies), and the approach was to focus on the effects of subsidies, with respect to both import replacement and impact in export markets. Dispute settlement action could be initiated if subsidies were deemed to cause serious prejudice to other contracting parties.

3. Material injury to domestic industries caused by imports of subsidized products may be and has been countered though the imposition of countervailing duties. The perceived abuse of countervailing duties as a means for trade harassment, and the unwillingness of some countries to accept tighter rules governing their application without corresponding disciplines on subsidies, led to the negotiation of the Tokyo Round Code on Subsides and Countervailing Duties. However, while intensifying the rules on export subsidies, this instrument was ineffective in clarifying rules on subsidies in general, although it recognized that subsidies were an inherent part of economic development programmes of developing countries. The Code was accepted by only a minority of GATT contracting parties. It was decided to renegotiate the Code in the Uruguay Round. The resulting Agreement on Subsidies and Countervailing Measures in the Draft Final Act appears, for the first time, to reflect an international consensus as to what forms of subsidies are acceptable. It classifies subsides into "prohibited", "actionable" and "non-actionable" categories, and further tightens the disciplines governing the application of countervailing duties. While it is envisaged that the Agreement would apply to all GATT contracting parties, including the many developing countries which did not adhere to the Tokyo Round Code, more specific provisions for differential and more favourable treatment for developing countries have also been incorporated into this instrument.

4. The fact that these fundamental conceptual problems were still being worked out with respect to subsidies on trade in goods, the absence of adequate information or past experience with respect to subsidies on services, the recognition that subsidies on services might take different forms and give rise to different problems than those on goods, and that trade in services was effected through four modes of delivery, were likely among the factors which led the Uruguay Round negotiators to postpone attempts to agree upon disciplines on subsidies on trade in services in the General Agreement of Trade in Services (GATS). Article XV of GATS recognizes that subsidies may have distortive effects on trade in services, and provides that the parties shall enter into negotiations with a view to developing the necessary disciplines to avoid such trade distortive effects, in the context of a future work programme. These negotiations will also address the appropriateness of introducing countervailing procedures and recognize the role of subsidies in relation to the development programmes of developing countries and the needs of developing countries for flexibility in this area. For the purposes of such negotiations, the parties

shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service providers.[1/]

Chapter I

SUBSIDIES FOR THE SERVICES SECTOR

5. International consensus on what constitutes a "subsidy" has consistently eluded the international trading community. The Agreement on Subsidies and Countervailing Measures included in the Uruguay Round Draft Final Act comes closest to achieving that consensus. The essence of the DFA definition is that the subsidy should result in a benefit being conferred through a financial contribution by a government (whether or not effected through a private body), including direct payments, or by the government foregoing revenue otherwise due, or by providing goods and services other than general infrastructure, by the government purchasing goods, or through income or price supports. Such subsidies are prohibited or actionable only to the extent that they are specific in the sense that they are limited to certain enterprises. The characteristics of goods and services being different, this definition, drawn up with trade in goods in mind, may not be entirely applicable to trade in services.

6. It should be noted in this context that an important type of subsidy to the trade and production of goods is the provision of services by the government under more favourable conditions. Subsidies to services act as subsidies to the production and export of goods and vice versa. The provision of subsidized services has led to countervailing actions against exports of the goods using or incorporating such services. Subsidies to goods could thus also be considered to provide subsidies to services, as is discussed below.

7. The DFA Agreement on Subsidies and Countervailing Measures, building upon elements of the Tokyo Round Code and GATT article XVI, already addresses certain services. For example, the preferential provision of internal transport and freight on export shipments, provided or mandated by governments on terms more favourable than for domestic shipments, constitutes a prohibited export subsidy.[2/] On the other hand, government assistance to consultancy services used for research purposes is considered a non-actionable subsidy.[3/] A variety of services, including infrastructural services to the agricultural sector, are exempted from the reduction commitments generally applying to domestic support for agricultural production.

8. In practice, input and infrastructural services have been alleged or determined as constituting "countervailable" subsidies in many countervailing duty investigations,[4/] including: (a) the provision of utilities at lower rates

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[1/] It should be noted that in GATS the two most important subjects where the negotiation of precise disciplines were postponed - i.e. subsidies and safeguards - are precisely those where in GATT multilateral obligations are related to judgements of economic impact of trade measures.

[2/] The Uruguay Round Agreement on Agriculture subjects such measures to a specific reduction commitment, although developing countries are exempted from this commitment until 1999.

[3/] Article 8 defines "applied research" as including work for the creation of new products, production processes and services.

[4/] These samples have been drawn from the experience of the United States on account of the availability of published information.

when used in production for export;[5/] (b) government-financed construction of infrastructures, including storage and processing facilities, for export-oriented industries;[6/] and (c) preferential rates for government-owned transportation for exported products.[7/]

9. It should also be recalled, however, that the same DFA has established a definition of trade in services that can be considered somewhat broader than that of trade in goods. Notably, such trade can be effected through commercial presence and the movement of natural persons to supply services as well as the movement of consumers. This implies that benefits accruing to enterprises (in the sense of Article 1 of the Subsidies Agreement), such as preferential tax regimes for foreign operations, which directly or indirectly benefit their foreign-based subsidiaries might also be considered as subsidies to exports of services. In addition, subsidies to the parent firm in the home country could provide competitive advantages to foreign subsidiaries abroad. Government programmes which underwrite costs of foreign travel to provide services could also conceivably be considered as export subsidies. Special fiscal and other benefits in favour of foreign consumers who purchase services in the country might also fall in this category. As noted below, the application of GATT principles for border tax adjustments may be particularly complicated in the case of trade in services.

Chapter II

SUBSIDIES TO SERVICES: SOME EXAMPLES

A. Subsidies to Infrastructural Services

10. As has been observed in the note prepared under item 3(a) of the Work Programme, governments have traditionally been faced with the dilemma arising

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5/ An example would be the program providing electricity discounts for exporters, under which Thai exporters received a discount of 20 per cent of the cost of electricity consumed to produce exports. While this program was terminated effective 1 June 1990, the United States Department of Commerce (USDOC) found it countervailable in the instance of steel wire rope from Thailand because of residual benefits. This type of subsidy has also been a major issue in magnesium from Canada.

6/ In fuel ethanol from Brazil, USDOC examined an allegation that sugar cane growers in the Northeast of Brazil have benefitted from plantation roads built at government expense for their exclusive use. While USDOC did not feel that such activities did not constitute a countervailable subsidy, they determined that the programme was not used as none of the respondents was located in the Northeast of Brazil. In certain fresh Atlantic groundfish from Canada, USDOC found numerous Canadian programmes to be countervailable, including: *Federal Programmes:* assistance for the construction of ice-making and fish-chilling facilities; preferential user fees to fishermen under the small craft harbour programme; and *Provincial Programmes:* New Brunswick: fish-unloading systems and ice-making programmes; Newfoundland: grants for rebuilding and repair of fishing and coastal vessels; P.E.I.: engine conversion programme; assistance for the construction of the ice-making and fish-chilling facilities; Quebec: grants for fish transport and seafood processing tanks; ice-making and fish-chilling assistance.

7/ Preferential ocean freight rates were alleged in potassium chloride from Israel but were not proven to the satisfaction of USDOC. In tool steel from Brazil, USDOC declined to find countervailable transportation subsidies from preferential rail rates because the exporters used trucks to move the product to the port of exportation. USDOC reached the same conclusion in certain stainless steel products from Brazil.

from the objective of providing infrastructural services in an efficient manner while, at the same time, seeking to ensure access to basic services for the widest possible proportion of the population, including persons with low purchasing power and persons and enterprises in less advantageously located regions of the country. These considerations have led to policies for subsidization, in particular of transportation and utility services.[8/] In many cases these subsidies are aimed at supporting the establishment or development of particular industries such as fishing, forestry, agricultural production, or natural resource extraction and refining, as well as services such as tourism, and have often been crucial to the development or survival of the industry or service concerned. Where these have been deemed to affect trade in the goods concerned they have sometimes provoked the imposition of countervailing duties by affected trading partners. Such subsidies can have an impact on trade in services when extended to the international arena, notably in the air and maritime transport sectors. The desire to have a national shipping company or airline for strategic or other reasons has led governments to heavily subsidize such operations, whether or not state-owned. There has been considerable documentation of subsidies affecting the maritime transport sector,[9/] such measures including fiscal and non-fiscal subsidization of operating and construction costs (the latter is essentially a subsidy to services through a subsidy to goods as discussed below). Rail transport has also traditionally been a heavily subsidized service sector.

11. Other categories of infrastructural or social services such as education, and often health services, are provided free or at minimal cost by the government. In many cases these services have attained a degree of efficiency and quality such that they can be exported, i.e., sold to foreign consumers in the country of origin, or through domestic enterprises or individual persons which offer such services in foreign countries. In particular, educational and health institutions, which may benefit from a variety of government subsidies, can offer services to foreign clients on a profit basis. Some developed countries are major exporters of educational and health services, through several modes of delivery. In this context, a number of developing countries are attempting to develop exports of specialized medical services as a means of cross-subsidizing the provision of health services to nationals.

12. In the telecommunications sector, subsidization can take the form of (a) government subsidization of telecommunications infrastructure, i.e., to facilitate the provision of a variety of telecommunication services, and (b) subsidization of the users of telecommunications services by government entities themselves, providing such services at less than full cost. The current boom in telecommunications trade has enabled most public telecommunications operators in OECD countries to show higher profits (very few operate at a loss), while actually reducing rates.[10/] For developing countries the situation is different. One of the issues discussed in the Uruguay Round negotiations on services was the extent to which cross-border telecommunications charges should reflect costs, and it was accepted that developing countries could retain their cross-subsidization schemes under which international communications were overcharged so as to provide financing for the development of the national telecommunications infrastructure. Some countries have provided telecommunications facilities at less than full cost in order to attract and

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[8/] United States programmes to support *rural electrification* and rural telephone services were examined by Revenue Canada in their 1986-7 CVD investigation of *grain corn* and were determined to be "normal functions of government" and not countervailable.

[9/] See for example L.J. White, *International Trade in Ocean Shipping Services, the United States and the World* (Cambridge, Mass.) as well as Commission of the European Communities, *Report on United States Trade and Investment Barriers 1992*.

[10/] OECD, *Communications Outlook 1993* (Paris: OECD, 1993).

support the operations of exporters of data processing and other information services. PTTs can also use profits from telecommunications services to cross-subsidize to support postal services which can, in turn, be provided at lower cost to support certain activities (e.g., domestic publications). As telecommunications firms, both public and private are increasingly more active in seeking clients wishing to establish international networks, export subsidization or the non-competitive actions of monopolies might become a more important issue in this sector.

B. Export Market Development

13. An important category of subsidized services are those related to "export market development", which may be sectoral and/or market-specific. Under such programmes, the government provides financial assistance to cover costs of a variety of activities related to the penetration of new markets or the preparation of feasibility studies and project proposals. Such programmes are primarily intended to lead to exports of the final product or service. However, the subsidization of feasibility studies, and the preparation of bids in particular, have been the subject of complaints from engineering and consultancy firms in developing countries, which find that they are not able to compete with subsidized foreign firms, neither in third-country export markets nor in their home markets.

14. The subsidized feasibility study can lead to the export of a major project which may also be subsidized through export credits which can be tied to the purchase of both goods and services from the country of origin.[11/] National donor agencies tend to tie financial support (formally or informally) for the execution of an investment project to the selection of a consulting firm from the donor country. In this context, as in other instances mentioned below, dumping can exist in parallel with subsidization as the firms themselves will often sell pre-investment services below cost in anticipation of gaining large construction contracts, as such services account for only about five percent of the project cost but tend to influence construction contract awards and procurement of equipment and raw materials, which can represent more than 70 per cent of project cost.

15. Developing countries have used various incentive schemes such as tax incentives, banking credits and accelerated depreciation allowances to promote the development of an export capability in engineering and construction services; with a few exceptions, however, they have not been able to compete effectively against the financing packages available to firms from developed countries.[12/] Many developing countries appear to have been reluctant to include construction and engineering services in their offers in the Uruguay Round negotiations, considering that trade in this sector was distorted by subsidies and other anti-competitive practices to such an extent that it would be unwise to enter into commitments to provide market access until more concrete disciplines could be

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[11/] An example of such assistance may be found in the U.S. Department of Commerce review of Canada's Program for Export Market Development (PEMD) in Oil Country Tubular Goods from Canada. This programme provides grants to defray the cost of export market development. The programme applies to exports of goods and services. These grants are repayable if they lead to securing export contracts for services. This type of programme benefits companies whose exports involve bid and proposal preparation. A 50 per cent grant, whether repayable or not, doubles the effective bid preparation market development budget of exporters who use the programme. See 51 FR 15041; 53 FR 50057; 44 FR 61589.

[12/] See Y. Soubra "Construction and Engineering Design Services" in *Trade in Services Sectoral Issues* (UNCTAD/ITP/26), pp. 185-214.

negotiated on subsidies and anti-competitive practices in the General Agreement on Trade in Services.[13/]

C. Media Services

16. Another sector where subsidies are prevalent is that of media services. Film production, advertising, and publishing often receive considerable financial support from governments and are generally available to all cultural industries. These include direct grants for the conception or production of a film, subsidized postal rates, etc. To a certain extent, such subsidies are a response to the peculiarities of trade in media products, such as cinema film in which most of the cost in making the "product" is incurred in turning out the first copy of the film or television programme. Additional copies can be reproduced very inexpensively, and these costs can easily be written off in large homogenous markets, protected by differences in cultural attitudes.[14/] Subsidies or quotas are in essence a response to imports that could technically be considered as having been dumped in the market. Similar situations arise with respect to the editorial content of newspapers and magazines.[15/]

D. Financial Services

17. Subsidies can be provided to the financial service sector through the tax system, primarily the treatment of losses carried forward or back from one tax period to another. In recent years, banks in all industrialized countries have been increasing their loss reserves; how these are taxed or not taken as taxable income is an important consideration for banks and property mortgage firms. More generally, government-financed rescues of financial institutions can be considered as a subsidy to the financial service subsector involved in the country concerned. In the absence of such government funding, the financial institutions themselves would have to absorb all the costs of rescuing a failed firm or incur costs arising from increased lack of confidence on the part of financial service consumers.[16/] Another form of implicit subsidy may be present in national prudential regulations which affect the capitalization of financial service firms. The lower the level of "capital adequacy" provisions, the greater the volume of loans banks can provide, and thus the higher the income they earn for a given volume of capital. This issue has been addressed by the Basle

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[13/] The extent of export subsidization in the construction sector is described by J. Lee in "Construction", in *The Uruguay Round and Services in the World Economy* (New York: World Bank and UNCTC, 1990).

[14/] See Susan Christopherson and Stephen Ball "Media Services: Considerations relevant to Multilateral Trade Negotiations" in *Trade in Services: Sectoral Issues* (UNCTAD/ITP/26). It should be noted that only two per cent of the television programmes in the United States are imported. See Tapio Varis, *International Trade in Television Programmes* (Paris, UNESCO, 1985).

[15/] Recently, a U.S. publication, *Sports Illustrated*, contracted with a Canadian printing/publishing firm to produce an edition for the Canadian market. The editorial input would be produced in New York and transmitted electronically to the printer in Canada. The Canadian publishing industry made representation to Canadian Customs authorities that anti-dumping duties should be imposed. Revenue Canada determined that they could not impose duties on electronically transmitted computer data. Over the ensuing months, this initiative attracted strong reactions from Canadian publishers and advertising industry representatives, and the Government of Canada established a task force to examine the problem.

[16/] See Rodney de C. Grey, "Subsidies on Traded Services, and Possible Offsetting Measures" (mimeo), UNCTAD, Geneva, 1992.

Committee on Banking Supervision which has formulated a set of capital adequacy standards now being put into effect in all major countries.[17/]

E. Subsidies to Goods

18. As noted above, subsidized service inputs have been deemed as constituting subsidies to the production and export of goods and services. Similarly, subsidies to goods can constitute subsidies to traded services. In certain cases subsidies to the service provider are conditional on the use of domestic goods, such as in the area of maritime transport.[18/] A variety of such subsidies related to the production and repair of ships and aircraft and the subsidization of shipping costs can be found in the maritime transport sector.[19/] Similarly, subsidies related to the production and maintenance of aircraft affect competitiveness in air transportation and of airline companies. Soft loans and other assistance to hotel construction can enable countries to improve their competitive position in the tourism market.

19. A similar link arises when services fall under subsidy programmes applied to specific goods exports, such as the case of the subsidies to advertising agricultural products of the United States as part of the United States Export Enhancement Program.[20/]

F. Government Purchases

20. There are areas where the frontier between what is a subsidy, in the sense of a financial contribution by a government, and benefits obtained from other forms of trade protection, notably failure to provide national treatment, is difficult to discern. Government purchases of goods[21/] can be considered a subsidy according to the DFA definition. Government purchases of services, which are extremely important in certain service sectors, could conceivably play the same role if they provide service producers with assured markets that would enable them to reduce their costs so as to compete more effectively internationally. A common example is the requirement that government employees must travel on domestic airlines when on official travel. Government purchases also provide consulting services with a major market - and one in which domestic consultants can cover much of their basic or fixed costs, particularly in periods of economic downturn. This situation provides opportunities for consultants in many disciplines to engage in "cutting edge" research and research and development work. Such assignments, undertaken for governments with considerable infrastructural support, enables these consultants to develop and expand their

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[17/] See UNCTAD, *Trade and Development Report 1992* (UNCTAD/TDR/12), Part Two, Annex I.

[18/] Section 601 of the United States Merchant Marine Act, as amended, provides for the payment of an Operating Differential Subsidy to United States operators of ships built in the United States of United States materials so as to place their operating costs on a parity with those of foreign companies. See Commission of the European Communities, *Report on United States Trade and Investment Barriers 1992*, p. 52.

[19/] See also discussion of subsidies in shipping and shipbuilding above, and boxes 1 and 2.

[20/] See "US Subsidizes Firms' Foreign Ads", *International Herald Tribune*, 25 July 1990.

[21/] The USDOC found such purchases to be countervailable in nitrocellulose from France.

knowledge base and to make their services more valuable and attractive to foreign clients in the commercial sector, and indeed to other governments. [22/]

21. Elements of trade regimes for trade in goods, such as rules of origin provisions which include service inputs in the regional content requirement, can provide special benefits to service suppliers.[23/]

G. Border Tax Adjustments

22. The GATT rules permit the rebate of indirect taxes on exported products and the imposition of taxes on imports to the extent that they are "borne by the like product when they are destined for consumption in the country of production or exportation"; on the other hand, direct taxes and social welfare charges can be assessed only in the country of production and may not be rebated or imposed on imports.[24/] Some countries have applied this principle to services. For example, in Canada foreign consumers are rebated indirect taxes imposed on their purchases of certain services while in Canada. However, the question of acceptable border tax adjustment on trade in services would seem to be one of considerable complexity.

H. Monopolies

23. Monopolies, including of the *de facto* private sort, would seem to be considerably more prevalent in the services sector that in the goods sector. Article VII of GATS imposes disciplines with respect to the treatment of "Monopolies and Exclusive Service Providers", its main thrust being that parties to GATS should ensure that such entities should not supply a monopoly service in a manner inconsistent with that party's obligations under the Agreement. There would seem to be a need for further study of the extent to which such monopolies could compete unfairly in the international market, as well as the extent to which they could "cross-subsidize" to provide services at less than cost with respect to their export activities.

[22/] With respect to the U.S. consulting services market, the Commission of the European Communities has claimed: "Federal contracts for consulting services (e.g. USIDA and the DOD) require US citizenship or 51 per cent ownership. Certified US permanent residency is not sufficient for a consultant to compete for Federal contracts." (See Commission of the European Communities, *op. cit.*, p. 40.)

[23/] Rules of origin within customs unions may create barriers against the provision of services such as engineering and design services. While some of the origin rules in the NAFTA currently preclude including in the value of net qualifying cost services related to marketing and sales promotion (including advertising), the growing importance of services in the economic industrial mix could lead to pressures for extension of the rules in this direction. Under the Canada/United States Free Trade Agreement, in the rules of origin for the automotive sector, the direct cost of processing is deemed to include design and engineering costs, thus encouraging this work to be carried out in Canada or the United States. (See discussion in USITC Publication 2460, *Rules of Origin Issues related to NAFTA and the North American Automotive Industry* (November 1991) p. 32.)

[24/] This has been described as the "partial destination principle". See G. Hufbauer and J.S. Erb, *Subsidies in International Trade* (London: MIT Press, 1984).

Chapter III

THE IMPACT OF SUBSIDIES ON SERVICE TRADE AND PRODUCTION

24. The DFA Agreement on Subsidies and Countervailing Measures provides guidance as to how to assess whether a subsidy has resulted in "serious prejudice". The criteria used are basically market shares in domestic, third-country or world markets and the comparison of prices with those of non-subsidized products. If such comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values. These criteria are reflected in national countervailing duty laws.

25. It is clear that for many services it would be difficult to obtain adequate data with respect to market shares and prices, and that the concept of "unit of output", and consequently, "unit costs" or "unit prices", might be somewhat inapplicable to many service sectors. Other problems would arise from difficulties in identifying the "origin" of services and from confusion between foreign and domestic firms (i.e., firms may be considered foreign under the GATS, but as "domestic" under relevant national legislation),[25/] as well as to what countervailing mechanism could effectively be applied in practice (as in most cases frontier measures could not be applied). For these and other reasons, authors who have addressed this issue have tended to argue against the establishment of a countervailing duty system for trade in services, on the basis that the data and conceptual difficulties would leave open the possibility of even greater abuse of countervailing duties than has been witnessed with respect to trade in goods. As far back as 1983, this question was addressed in a study conducted by the Office of the United States Trade Representative, which observed that:

> dumping and subsidy practices can apply to services as well as goods. However, careful consideration must be given to the technical problems associated with the computation of a dumping margin for service imports. The ability to legally measure sales at less than fair value is dependant, among other factors, on the ability to establish the value of the imported merchandise as stated in customs invoices. The complicated adjustment process involved in comparing home market to foreign prices could raise insurmountable technical difficulties because of the absence of specific documents in many service sectors. Enforcement of anti-dumping and countervailing duties could be difficult in cases where sales at less than fair value were found. Some services do not pass through customs when they enter the country making it impossible for customs officials to enforce the anti-dumping duties as is done in the case of goods.[26/]

26. This issue was addressed by the OECD Secretariat at the beginning of the Uruguay Round. It determined that:

> work so far has not yet enabled the scale of the problem to be accurately gauged, though it would seem to arise in some sectors. While on the face of it desirable, it would probably not be practical in most sectors to seek to transpose to services solutions derived from countervailing or anti-dumping duties. Should a country suffer injury as a result of predatory or unfair practices,

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[25/] For example, foreign-owned enterprises could still have the right to seek countervailing measure protection from the host-country government and could be covered by that country's competition laws.

[26/] Office of the United States Trade Representative, *U.S. National Study on Trading Services*, December 1983, pp. 91-92.

> provision might be made for it to be able to resort to more flexible offsetting measures. This aspect ... calls for further study.[27/]

27. Nevertheless some countries are beginning to arm themselves with mechanisms for dealing with unfair trade practices, (i.e., subsidies and dumping) which are perceived to be prevalent in certain service sectors. An important example was set by the European Community in the measure it formulated in 1986 in regard to "unfair pricing practices" in maritime transport. This measure was directed against the practices of certain shipping companies to set low prices to secure freight contracts. The practices deemed to be unfair were described as

> the continuous charging on a particular shipping route to or from or within the Community of freight rates for selected or all commodities which are lower than the normal freight rates charged during a period of at least six months, when such lower freight rates are made possible by the fact the shipowner concerned enjoys non-commercial advantages which are granted by a State which is not a member of the Community.[28/]

The United States regulatory regime on shipping also provides protection against certain "unfair" practices in the "rate standard for controlled carriers", and "predatory pricing provisions" of the 1984 Shipping Act.

28. Some countries have drawn up general trade legislation to deal with problems arising in trade in services on the same basis as trade in goods. For example, the Canadian International Trade Tribunal is empowered to:

> enquire into and report to the Governor-in-Council on any matter in relation to the economic, trade or commercial interests of Canada with respect to any goods or services or any class thereof ...[29/]

29. Many countries tend to avoid the use of countervailing duties although they have countervailing duty laws on the books, preferring to deal with all problems of price discrimination through anti-dumping actions. The imposition of countervailing duties to offset government subsidy programmes may continue to be a politically sensitive issue, as an attack on government programmes is invariably considered as more likely to provoke a more vigorous reaction than allegations of dumping against private firms. It would be difficult to envisage a system where action could be taken against subsidized imports but not against dumped ones, or to provide for substantially different mechanisms for dealing with injurious dumped and subsidized imports. As noted above, certain practices prevalent in sectors such as construction and engineering and media services could well be considered as dumping or subsidization, but a number of anti-competitive practices have been identified as having an important impact on trade in certain services, but which are not based on price discrimination and have been dealt with through competition law rather than frontier measures. The regulations drawn up by the European Community and the United States, as well

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[27/] OECD Trade Committee/Trade in Services, *Draft Report of the Committee to the Council TC(86)2 (1st Revision)* 6 March 1986.

[28/] Council Regulation (EEC) no. 4057/86, *Official Journal of the European Communities*, No. L378/14 31/12/1986, See also Jean-François Bellis, Edwin Vermulst and Philippe Musquare, "The New EEC Regulation on Unfair Pricing Practices in Maritime Transport; A Forerunner of the Extension of Unfair Trade Concepts to Services?" *Journal of World Trade*, No. 22, February 1988.

[29/] *Canadian International Trade Tribunal Act*, Section 18.

as by the International Civil Aviation Organization (ICAO), to discipline certain practices relating to Computerized Reservation Systems are a case in point.[30/]

30. At an earlier stage of the Uruguay Round negotiations, the question of price discrimination arising from subsidization was discussed rather inconclusively. Difficulties in, if not the impossibility of, calculating the price differential arising from a subsidy, and of the consequent injury to domestic producers have led to proposals that subsidies to services trade along with dumping should be dealt with under dispute settlement procedures or through competition law, rather than unilaterally.

31. Given the heterogeneity of service sectors, including the differences in the way that trade takes place as between sectors, the subsidy question might best be addressed on a sector-specific basis, as it would be extremely difficult to adopt a common approach to identify the trade impact of subsidies.

Chapter IV

PRIORITIES FOR FURTHER WORK

32. It is clear from the above that much pioneering work is required to (a) identify subsidies on services, and (b) assess their trade impact. The DFA provides that all parties shall exchange information concerning all subsidies related to trade in services that they confer upon or make available to domestic services providers. However, in implementing this, the following elements may need to be taken into account:

- there may be differing interpretations of what constitutes a subsidy among participants;
- adequate cognizance needs to be taken of the fact that the concept of trade in services extends beyond that of trade in goods to cover commercial presence and movement of natural persons;
- a proper compilation will require analysis of all government programmes (many of which will not be directly trade-related);
- it is possible that programmes related to trade in goods may also have an impact on trade in services;
- the actual practices in the case of subsidies may differ from the announced policies, depending on interpretation; and
- compilation of such information could be very time-consuming, particularly for countries with limited resources.

33. However, past experience in the GATT indicates that self-notification procedures on subsidies have been largely unsatisfactory in that governments have been reluctant to officially designate their practices as subsidies, as these might provoke charges of countervailing duty, and be used against them, in such cases. However, since - as has been discussed - the subsidies on services can constitute subsidies on goods exports, the possible criteria for countervailing action on subsidized exports of services have not been defined, and there may be a comparable reluctance to notify possible subsidies on services. Furthermore, the notifications on subsidies have been received from a minority of GATT contracting parties. Countries can be expected to have considerable difficulty in providing information on subsidies to services.

34. A more systematic identification of subsidies to services production and trade is a prerequisite to accomplishing the mandate of the Standing Committee to study the impact of subsidies on trade in services, especially on exports from

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[30/] See P. Brusick, M. Gibbs and M. Mashayekhi, "Anti-Competitive Practices in the Services Sector" in *Uruguay Round: Further Papers on Selected Issues* (UNCTAD/ITP/42). See also François Vellas, "Approche du secteur de tourisme international" (mimeo), UNCTAD, Geneva, May 1993.

developing countries. It would appear that in order to assist the Standing Committee in implementing item 3 (d) of its Work Programme, additional work may need to be undertaken by the secretariat. Such research could be carried out in collaboration with members of the Committee. This could involve a review of available material, including:

- official journals and gazettes;
- budget documents;
- trade action report by administrative agencies;
- reports on procurement and grants for research and development;
- reports of foreign aid and development agencies; and
- rules of origin in regional trading agreements and other relevant materials.

35. To ensure that this work will remain manageable, particularly in proceeding from the stage of identifying subsidy measures to that of attempting to assess their impact, it might be desirable to focus work on a sectoral basis from the beginning. For example, case studies could be conducted in areas where it is perceived that subsidies have a major impact on trade in sectors of export interest to developing countries (e.g., construction and engineering design services) National experiences in the use of subsidies to develop export capacities in service sectors could also be examined. It might also be useful to look at specific issues peculiar to trade in services such as those arising from the different modes of delivery. Such studies could examine possible benefits received by corporations to allow them to compete more effectively in world trade in services, including through commercial presence in foreign markets. The Standing Committee could provide guidance as to the appropriate direction of further work under the agenda item. Other international organizations could contribute to this exercise, and members could bring relevant studies or other data on this issue to the attention of the Standing Committee and the secretariat.